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RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 8th May, 1959:—

BILL No. IX OF 1959

A Bill to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and for matters connected therewith.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1 (1) This Act may be called the Orphanages and other Charitable Homes (Supervision and Control) Act, 1959. Short title,
extent and
commence-
ment.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Board" means the Board of Control established under section 5;

(b) "certificate" means the certificate of recognition granted under section 12;

(c) "child" means a boy or girl who has not completed the age of eighteen years;

(d) "home" means an institution, whether called an orphanage, a home for neglected women or children, a widow's home, or by any other name, maintained or intended to be maintained for the reception, care, protection and welfare of women or children;

(e) "manager" means a member of the managing committee referred to in section 19;

(f) "managing committee" means the committee of management referred to in section 19;

(g) "recognising authority" means the authority empowered to grant a certificate;

(h) "recognised home" means a home in respect of which a certificate has been granted;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "woman" means a female who has completed the age of eighteen years.

Act not to
apply to
certain
institutions.

3. Nothing in this Act shall apply to—

(a) any hostel or boarding-house attached to, or controlled, or recognised by, an educational institution; or

(b) any protective home established under the Suppression of Immoral Traffic in Women and Girls Act, 1956; or

104 of 1956.

(c) any reformatory, certified or other school, or any home or workhouse, governed by any enactment for the time being in force.

Effect of Act
on instru-
ments govern-
ing recog-
nised insti-
tutions.

4. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any instrument governing a recognised institution to which the said provisions apply.

CHAPTER II

THE BOARD OF CONTROL AND ITS POWERS AND FUNCTIONS

Board of
control, its
constitution,
etc.

5. (1) The State Government may, by notification in the Official Gazette, establish a Board of Control for the control and supervision of homes in the State.

(2) The Board shall consist of such number of members as the State Government may think fit to appoint, and one of them shall be appointed by that Government to be the Chairman thereof.

(3) Any member may resign his office by giving notice in writing to the State Government and on such resignation being notified in the Official Gazette by that Government, shall be deemed to have vacated his office.

(4) No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

6. (1) It shall be the duty of the Board to—

Functions of
the Board.

(a) advise the State Government on matters concerning the recognition, maintenance and conduct of homes;

(b) generally supervise and control all matters relating to the management of homes in accordance with the provisions of this Act; and

(c) exercise such other powers and perform such other functions as may be prescribed by or under this Act.

(2) In the performance of its functions under this Act, the Board shall be bound by such directions as the State Government may give to it.

7. Subject to the directions, if any, given under sub-section (2) of section 6, the Board may, from time to time, give such general or special directions to the manager of a recognised home as it thinks fit for the efficient management of the home and the manager shall comply with such directions.

Power of
Board to
give direc-
tions to
manager of a
recognised
home.

8. Any member of the Board, or any officer of the Board authorised in writing by it in this behalf, by general or special order, may enter at all reasonable times any home for the purpose of ascertaining whether the provisions of this Act or of any rules or orders made thereunder are being complied with and may require the production, for his inspection, of any document, book, register or record kept therein and ask for any information relating to the working of the home.

Power of
inspection.

9. The funds of the Board shall consist of such sums as may be paid to it by any person or authority by way of grants, donations, subscriptions and the like.

Funds of
the Board.

10. Subject to such rules as may be made by the State Government in this behalf, the Board may, for the purpose of enabling it to efficiently perform its functions or exercise its powers under this Act, appoint such officers or other employees as it may think fit and determine their functions and conditions of service.

Staff of
Board.

Delegation
of powers.

11. Subject to the control of the State Government, the Board may, by general or special order in writing and subject to such conditions and limitations, if any, as may be specified therein, delegate to the Chairman or any other member or any officer thereof such of its powers and functions under this Act, as it may deem necessary, for the efficient carrying on of its administration.

CHAPTER III

RECOGNITION OF HOMES

Recognition
of homes.

12. After the commencement of this Act, no person shall maintain or conduct any home except under, and in accordance with, the conditions of a certificate of recognition granted under this Act.

Application
for certi-
ficate.

13. Every person desiring to maintain or conduct a home shall make an application for a certificate of recognition to such authority, in such form and containing such particulars as may be prescribed:

Provided that a person maintaining or conducting a home at the commencement of this Act shall be allowed a period of three months from such commencement to make an application for such certificate.

Grant or
refusal of
certificate.

14. (1) On receipt of an application under section 13, the recognising authority, after making such inquiry as it considers necessary, may, by order in writing, either grant a certificate or refuse to grant it.

(2) No order refusing to grant a certificate shall be made until an opportunity is given to the applicant to be heard in the matter and where a certificate is refused, the grounds for such refusal shall be communicated to the applicant in the prescribed manner.

(3) No fee shall be charged for the grant of a certificate.

(4) A certificate shall not be transferable.

Conditions
of recogni-
tion.

15. (1) The certificate shall specify—

- (a) the name and location of the recognised home;
- (b) the names of the managers thereof;
- (c) the nature of the home, whether for women generally or for widows or for children generally or for orphans or for one or more of these classes;
- (d) the number of inmates to be taken by the home; and
- (e) such other conditions and particulars as may be prescribed.

ed.

(2) The recognising authority shall not, ordinarily, permit any recognised home to admit as inmates, persons of different sexes, but may do so for reasons to be recorded and subject to such conditions and limitations as may appear to it to be in the public interest.

(3) without the previous written consent of the recognising authority, no recognised home shall—

(a) change its name or location as specified in the certificate in respect of it; or

(b) alter the purpose of any service specified therein.

16. (1) The recognising authority may, without prejudice to any other penalty to which a person to whom a certificate has been granted may be liable under this Act, revoke the certificate—

Revocation
of certifi-
cate.

(a) if it is satisfied that the home is not being conducted in accordance with the conditions laid down in the certificate; or

(b) the management of the home is being persistently carried on in an unsatisfactory manner or is being carried on in a manner highly prejudicial to the moral and physical well-being of the inmates; or

(c) the home has, in the opinion of the recognising authority, otherwise rendered itself unsuitable for that purpose:

Provided that no order of revocation shall be made under this sub-section until an opportunity is given to the person to show cause why the certificate should not be revoked.

(2) Where a certificate in respect of a home has been revoked under sub-section (1), such home shall cease to function from the date of such revocation:

Provided that where an appeal lies under section 17 against an order of revocation, such home shall cease to function—

(a) where no such appeal has been preferred, immediately on the expiration of the period prescribed for the filing such appeal;

(b) where such appeal has been preferred but the order of revocation has been upheld, from the date of the appellate order.

(3) On the revocation of a certificate in respect of a home, the recognising authority may direct that any woman or child who is an inmate of such home on the date of such revocation shall be—

(a) restored to the custody of her or his parent, husband or lawful guardian, as the case may be, or

(b) transferred to another recognised home, or

(c) entrusted to the care of any other fit person:

Provided that no woman shall be entrusted to the care of any person other than a woman.

Appeals.

17. Any person aggrieved by an order of the recognising authority refusing to grant a certificate or revoking a certificate may, in such manner and within such period as may be prescribed, prefer an appeal to the Board against such refusal or revocation:

Provided that the Board may admit an appeal after the expiry of the period so prescribed, if it is satisfied that the applicant was prevented by sufficient cause from preferring the appeal in time.

Surrender of
certificate
and its
effect.

18. (1) The manager of a home may, on giving six months' notice in writing to the recognising authority of his intention so to do, apply for the withdrawal of the certificate granted in respect of that home and on the expiration of the said period from the date of notice, the certificate shall, unless before that time the notice is withdrawn, cease to have effect; and the home shall cease to function.

(2) No woman or child shall be received into any such home after the date of such notice; but nothing in this section shall be construed to affect the obligation of the manager to teach, train, lodge, clothe and feed the inmates of home until the certificate ceases to take effect under sub-section (1).

CHAPTER IV

MANAGEMENT OF RECOGNISED HOMES

Managing
committee.

19. (1) There shall be a managing committee in charge of the management of every recognised home and the members of the managing committee shall be deemed to be the managers of that institution for the purposes of this Act.

(2) The constitution, powers and functions of the managing committee and the term of office of the members thereof shall be such as may be provided in the constitution pertaining to such home.

Power of
Board to
amend con-
stitution of
managing
committee.

20. Whenever the Board think it necessary or expedient so to do, it may, for reasons to be recorded in writing, order—

(a) that the constitution pertaining to the management of a recognised home shall be, and be deemed to have been, amended in the manner specified by the Board; or

(b) that the managing committee be constituted or reconstituted in the manner specified by the Board.

21. It shall be the duty of every manager to teach, train, lodge, clothe and feed every woman or child admitted into the recognised home until the woman is rehabilitated or the child completes the age of eighteen years or until the certificate ceases to have effect.

Duty of Manager to teach, train, etc., inmates.

22. (1) Subject to the regulations, if any, made by the Board, if the managing committee of a home is satisfied that an inmate of the home has become fit to earn his or her livelihood or is otherwise fit to be discharged from the home, it may discharge such inmate.

Discharge of inmates of home.

(2) Notwithstanding anything contained in sub-section (1), no female inmate of a home shall be discharged or given in marriage or entrusted to the care of any other person unless such female has made a declaration before the Board or an officer specified by it in this behalf that she consents to such discharge, marriage or entrustment, as the case may be, and, if the inmate to be given in marriage is a minor, unless the Board or officer, as the case may be, has given its or his approval thereto.

23. The manager shall, within a fortnight of the occurrence of any death among the inmates of his home, send a written report thereof to the Board explaining the cause of death to the best of his knowledge.

Reports regarding deaths of inmates.

CHAPTER V

MISCELLANEOUS

24. Any person who contravenes any of the provisions of this Act or of any rule or order made thereunder or any of the conditions of a certificate shall be punishable in the case of a first offence with imprisonment which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both, and in the case of a second or subsequent offence, with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

Penalties.

25. No prosecution under this Act shall be instituted except with the previous sanction of the District Magistrate.

Sanction for prosecutions.

26. The members of the Board, the licensing authority and every person empowered by the Board to exercise any of its powers under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Persons performing functions under Act to be public servants.

27. No suit, prosecution or other legal proceeding shall lie against any person who performs any function under this Act for anything done or intended to be done in good faith under this Act or any rule or order made thereunder.

Protection of acts done in good faith.

Power of
State Go-
vernment to
make Rules.

28. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the persons to be appointed as members of the Board, the manner of their appointment, their term of office and the manner of filling casual vacancies among them;

(b) the disqualifications for membership of the Board and the procedure to be followed in removing a member who is or becomes subject to any disqualification;

(c) the funds of the Board;

(d) the travelling and other allowances to be drawn by members of the Board;

(e) the appointment of staff for enabling the Board to perform its functions efficiently under this Act and their recruitment and conditions of service;

(f) the calling of returns and other information by the State Government from the Board and the managing committees;

(g) the form in which an application for certificate of recognition may be made, the particulars to be contained in such application and the form in which, and the conditions subject to which, such certificate may be granted;

(h) the maintenance of registers and accounts by the Board and the audit of their accounts;

(i) any other matter which is to be, or may be, prescribed.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before the State Legislature.

Power of
Board to
make regu-
lations.

29. (1) The Board may, with the previous approval of the State Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder, for enabling it to perform its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely—

(a) the time and place of the meetings of the Board, the procedure to be followed in regard to the transaction of business at such meetings and the quorum necessary for the transaction of business at such meetings;

(b) the maintenance of the minutes of meetings of the Board and the transmission of copies thereof to the State Government;

(c) the appointment of sub-committees and local committees and of persons by the Board for the purpose of assisting it in performing its functions under this Act;

(d) the constitution of the managing committee, its powers and functions, the term of office of the members thereof, the circumstances in which they may be removed, and the manner of filling casual vacancies;

(e) the control and supervision of the management of recognised homes;

(f) the inspection of homes;

(g) the calling of returns and other information by the Board from managing committees;

(h) the reception, care, treatment, maintenance, protection, training, welfare, instruction, control and discipline of inmates in recognised homes including all matters relating to their diet, clothing, accommodation, general conduct and aftercare;

(i) visits to, and communication with, inmates of recognised homes and the grant of permission to such inmates to absent themselves for short periods;

(j) the discharge of inmates from recognised homes, their transfer from one recognised home to another and the reports to be sent by managing committee to the recognising authority;

(k) any other matter in respect of which provision is, in the opinion of the Board, necessary for the efficient control and supervision of homes.

(3) The State Government may, by notification in the Official Gazette, amend, vary or rescind any regulation which it has approved; and thereupon the regulation shall have effect accordingly, but without prejudice to the exercise of the powers of the Board under sub-section (1).

105 of 1956. 30. (1) As from the date of the coming into force in any State of this Act, the Women's and Children's Institutions (Licensing) Act, 1956, and any other Act corresponding to this Act in force in that State immediately before such commencement, shall stand repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any direction given, any register or rule or order made or any restriction imposed) under the said Act shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions aforesaid, as if they were in force when such thing was done or such action was taken, and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

STATEMENT OF OBJECTS AND REASONS

There are hundreds of orphanages and other charitable homes in the country whose pitiable conditions of existence do not appear to have been taken into consideration in any legislation so far undertaken in any State Legislature or in Parliament.

The Bills hitherto introduced either in the State Legislatures or in Parliament have sought to penalise criminal activities commonly presumed to be indulged in by orphanages and widows' homes and to vest in the executive powers to deal with such activities. But very little attention has been given to the constructive side of these institutions.

It must be admitted on all hands that orphanages and other charitable homes are necessary for the society for diverse reasons. Besides giving protection to the unprotected and unhappy members of the society and affording an outlet for laudable charity for charitably minded persons, these institutions, if run on proper national lines, can help the building of the nation.

Thus every State Government in India is required under this Bill to establish a Board of Control for orphanages and charitable homes in the State.

So far as the constructive side is concerned, no existing orphanage or charitable home is to be disturbed, but only its management is sought to be regularised through a managing committee to be elected as prescribed.

KAILASH BIHARI LALL

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 28 of the Bill provides for making rules by the State Government in respect of such things of a routine nature as the form of application, conditions of recognition, form of returns, appointment of members of the Board, funds of the Board, appointment of the Staff of the Board and so on.

Clause 29 of the Bill provides for making regulations by the Board in respect of meetings of the Board, Sub-Committees of the Board, its powers and functions, inspection of the homes, care and after-care of the inmates and so on. The proposed delegation of legislative power, therefore, is of a normal character.

KAILASH BIHARI LALL.

S. N. MUKERJEE,
Secretary.

